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GENERAL STATUTES

OF THE

STATE OF MINNESOTA.

PREPARED BY THE COMMISSIONERS APPOINTED TO REVISE
THE STATUTES OF THE STATE, BY ACT OF THE
LEGISLATURE, PASSED FEBRUARY 17, 1863.

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1 SECT. 9. If the value of the estate so advanced is ex-
 2 pressed in the conveyance, or in the charge thereof made
 3 by the intestate, or in the acknowledgment of the party re-
 4 ceiving it, it shall be considered as of that value in the di-
 5 vision and distribution of the estate; otherwise it shall be
 6 estimated according to its value when given, as nearly as
 7 the same can be ascertained.

1 SECT. 10. If any child or other lineal descendant so ad-
 2 vanced dies before the intestate leaving issue, the advance-
 3 ment shall be taken into consideration in the division and
 4 distribution of the estate, and the amount thereof shall be
 5 allowed accordingly by the representatives of the heirs so
 6 advanced in like manner, as if the advancement had been
 7 made directly to them.

1 SECT. 11. Nothing in this chapter shall affect the title
 2 of a husband as tenant by the curtesy, nor that of a widow
 3 as tenant in dower; nor shall the same affect any limitation
 4 of an estate, by deed or will.

1 SECT. 12. Inheritance or succession, "by right of rep-
 2 resentation," takes place when the descendants of any de-
 3 ceased heir take the same share or right in the estate of
 4 another person, that their parent would have taken if living.
 5 Posthumous children are considered as living at the death
 6 of their parents.

CHAPTER XLVII.

WILLS.

1 SECTION 1. Every person of full age and sound mind,
 2 being seized in his own right of any lands, or entitled to
 3 any interest therein descendable, to his heirs, may devise
 4 and dispose of the same by his last will and testament in
 5 writing; and all such estate not disposed of by will, shall
 6 descend as the estate of an intestate, being chargeable in
 7 both cases with the payment of all debts; and any married
 8 woman may devise and dispose of any real or personal pro-
 9 perty held by her, or to which she is entitled in her own
 10 right, by her last will and testament in writing, and may
 11 alter or revoke the same in like manner as if she was un-
 12 married.

C. S. p. 425, Sect. 1.
 Amended. 240

1 SECT. 2. Every devise of land in any will hereafter
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2 made, shall be construed to convey all the estate of the de-
 3 visor therein which he could lawfully devise, unless it
 4 clearly appears by the will, that the deviser intended to
 5 convey a less estate.

1 SECT. 3. Any estate, right, or interest in lands acquired
 2 by the testator after making his will, shall pass thereby in
 3 like manner as if possessed at the time of making the will,
 4 if such manifestly appears by the will, to have been the in-
 5 tention of the testator.

1 SECT. 4. Every person of full age and sound mind may,
 2 by his last will and testament in writing, bequeath and dis-
 3 pose of all his personal estate remaining at his decease, and
 4 all his right thereto and interest therein; and all such estate
 5 not disposed of by the will, shall be administered as intes-
 6 tate estate.

1 SECT. 5. No will, except such nuncupative wills as are
 2 hereinafter mentioned, shall be effectual to pass any estate,
 3 real or personal, or to charge, or in any way affect the
 4 same, unless it is in writing, and signed at the end thereof,
 5 by the testator, or by some person in his presence, and by
 6 his express direction, and attested and subscribed in his
 7 presence by two or more competent witnesses; and if the
 8 witnesses are competent at the time of attesting the execu-
 9 tion of the will, their subsequent incompetency from what-
 10 ever cause it arises, shall not prevent the probate and al-
 11 lowance of the will, if it is otherwise satisfactorily proved.

1 SECT. 6. No nuncupative or unwritten will bequeath-
 2 ing personal estate shall be valid unless made by a soldier
 3 while in actual military service or by a mariner while at
 4 sea.

1 SECT. 7. All beneficial devises, legacies, and gifts made
 2 or given in any will, to a subscribing witness thereto, shall
 3 be wholly void, unless there are two other competent sub-
 4 scribing witnesses to the same; but a mere charge on the
 5 lands of the deviser for the payment of debts, shall not pre-
 6 vent his creditors from being competent witnesses to his
 7 will.

1 SECT. 8. But if any witness to whom a beneficial devise
 2 is made or given, would be entitled to any share of the es-
 3 tate of the testator, in case the will is not established, then
 4 so much of the share that would have descended or been
 5 distributed to such witness as will not exceed the devise or
 6 bequest made to him in the will, shall be saved to him, and
 7 he may recover the same of the devisees or legatees named

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 C. S. p. 426, Sects. 6
 & 7 combined &
 amended.

8 in the will, in proportion to and out of the parts devised or
9 bequeathed to them.

1 SECT. 9. No will or any part thereof, shall be revoked,
2 unless by burning, tearing, canceling, or obliterating the
3 same, with the intention of revoking it, by the testator, or
4 by some person in his presence, and by his direction; or
5 by some will, codicil, or other writing signed, attested, and
6 subscribed in the manner provided for the execution of a
7 will; but nothing contained in this section shall prevent the
8 revocation implied by law, from subsequent changes in the
9 condition or circumstances of the testator.

1 SECT. 10. Every person having the custody of any will,
2 shall, within thirty days after he has knowledge of the death
3 of the testator, deliver the same into the probate court which
4 has jurisdiction of the case, or to the person named in the
5 will as executor.

1 SECT. 11. Every person named as executor in any will,
2 shall, within thirty days after the death of the testator, or
3 within thirty days after he has knowledge that he is named
4 executor, if he obtains such knowledge after the death of the
5 testator, present such will to the probate court which has
6 jurisdiction of the case, unless the will has been otherwise
7 delivered to the judge of probate, and shall within the pe-
8 riod above mentioned signify to the court his acceptance of
9 the trust, or make known in writing to such court his refu-
10 sal to accept it.

1 SECT. 12. Every person who neglects to perform any of
2 the duties required in the two preceding sections, without
3 reasonable cause, shall be guilty of a misdemeanor, and be
4 liable to any party aggrieved for the damages sustained by
5 such neglect.

1 SECT. 13. If any person having the custody of a will,
2 after the death of the testator, without reasonable cause,
3 neglects to deliver the same to the probate court having ju-
4 risdiction of it, after being duly notified by such court for
5 that purpose, he may be committed to the jail of the county
6 by warrant issued by such court, and there be kept
7 in close confinement, until he delivers the will as above di-
8 rected.

1 SECT. 14. When any will is delivered to any probate
2 court having jurisdiction of the same, such court shall ap-
3 point a time and place for proving it, when all concerned
4 may appear and contest the probate of the will, and shall
5 cause public notice thereof to be given by personal service

6 on all persons interested, or by publication under an order
7 of such court, in such newspaper printed in this state, as
8 the judge shall direct, three weeks successively, previous to
9 the time appointed, and no will shall be proved until notice
10 is given as herein provided.

1 SECT. 15. If no person appears to contest the probate
2 of a will at the time appointed for that purpose, the court
3 may, in its discretion, grant probate thereof, on the testi-
4 mony of one of the subscribing witnesses only, if such wit-
5 ness testifies that such will was executed in all the particu-
6 lars as required in this chapter, and that the testator was of
7 sound mind at the time of the execution thereof.

1 SECT. 16. If none of the subscribing witnesses reside in
2 this state at the time appointed for proving the will, the
3 court may in its discretion admit the testimony of other
4 witnesses to prove the sanity of the testator and the execu-
5 tion of the will; and as evidence of the execution of the
6 will may admit proof of the handwriting of the testator and
7 of the subscribing witnesses.

1 SECT. 17. No will shall be effectual to pass either real
2 or personal estate, unless it is duly proved and allowed in
3 the probate court, as provided in this chapter, or on appeal
4 in the district court; and the probate of a will of real or
5 personal estate, as above mentioned, shall be conclusive as
6 to its due execution.

1 SECT. 18. All wills, duly proved and allowed in any of
2 the United States, or in any foreign country or state, accord-
3 ing to the laws of such state or country, may be allowed,
4 filed, and recorded in the probate court of any county in
5 which the testator has real or personal estate, on which
6 such will may operate, in the manner mentioned in the fol-
7 lowing sections.

1 SECT. 19. When a copy of such will, and the probate
2 thereof, duly authenticated, is produced by the executor or
3 other person interested in such will, to the probate court,
4 such court shall appoint a time and place of hearing, and
5 notice shall be given in the same manner as in the case of
6 an original will presented for probate.

1 SECT. 20. If, on hearing the case, it appears to the court
2 that the instrument ought to be allowed in this state, as the
3 last will and testament of the deceased, the copy shall be
4 filed and recorded, and the will shall have the same force
5 and effect as if it had been originally proved and allowed in
6 the same court.

1 SECT. 21. When any will is allowed, as mentioned in
2 the preceding section, the probate court shall grant letters
3 testamentary, or letters of administration, with the will an-
4 nexed, and such letters testamentary or of administration
5 shall extend to all the estate of the testator in this state;
6 and such estate, after payment of his just debts, and expen-
7 ses of administration, shall be disposed of according to such
8 will, so far as such will may operate upon it, and the resi-
9 due shall be disposed of as is provided by law in cases of
10 estates in this state, belonging to persons who are inhabit-
11 ants of any other state or country.

1 SECT. 22. When any child is born after the making of
2 his parent's will, and no provision is made therein for him,
3 such child shall have the same share in the estate of the tes-
4 tator, as if he had died intestate, and the share of such child
5 shall be assigned to him, as provided by law in case of in-
6 testate estates, unless it is apparent from the will that it was
7 the intention of the testator that no provision should be
8 made for such child.

1 SECT. 23. When any testator omits to provide in his
2 will for any of his children, or for the issue of any deceased
3 child, and it appears that such omission was not intention-
4 al, but was made by mistake or accident, such child, or the
5 issue of such child, shall have the same share in the estate
6 of the testator as if he had died intestate, to be assigned as
7 provided in the preceding section.

1 SECT. 24. When any share of the estate of a testator is
2 assigned to a child born after the making of a will, or to a
3 child or the issue of a child omitted in the will, as hereinbe-
4 fore mentioned, the same shall first be taken from the estate
5 not disposed of by the will, if any; if that shall not be suf-
6 ficient, so much as is necessary shall be taken from all the
7 devisees or legatees, in proportion to the value of the estate
8 they may respectively receive under the will, unless the ob-
9 vious intention of the testator, in relation to some specific
10 devise or bequest, or other provision in the will, would there-
11 by be defeated, in which case such specific devise, legacy
12 or provision may be exempted from such apportionment,
13 and a different apportionment may be adopted in the dis-
14 cretion of the probate court.

1 SECT. 25. When a devise or legacy is made to any
2 child or other relation of the testator, and the devisee or le-
3 gatee dies before the testator, leaving issue who survives
4 the testator, such issue shall take the estate so given by the
5 will, in the same manner as the devisee or legatee would
6 have done if he had survived the testator, unless a different
7 disposition is made or directed by the will.

1 SECT. 26. All the estate of the testator, real and per-
2 sonal, is liable to be disposed of for the payment of his
3 debts and the expenses of administering his estate, and the
4 probate court may make such reasonable allowance as may
5 be judged necessary for the expenses of the maintenance of
6 the widow and minor children, or either, constituting the
7 family of the testator, out of his personal estate or the in-
8 come of his real estate, during the progress of the settle-
9 ment of the estate, but never for a longer period than until
10 their shares in the estate are assigned to them.

1 SECT. 27. When the testator makes provision by his
2 will or designates the estate to be appropriated for the pay-
3 ment of his debts, the expenses of administration, or fami-
4 ly expenses, they shall be paid according to the provisions
5 of the will, and out of the estate thus appropriated.

1 SECT. 28. If the provision made by the will, or the es-
2 tate appropriated is not sufficient to pay the debts, expenses
3 of administration and family expenses, such part of the es-
4 tate, real and personal, as is not disposed of by the will, if
5 any, shall be appropriated according to the provisions of
6 the law for that purpose.

1 SECT. 29. The estate, real and personal, given by will
2 to any devisees or legatees is liable for the payment of the
3 debts, expenses of administration, and family expenses, in
4 proportion to the amount of the several devises or legacies,
5 except that specific devises and legacies, and the persons to
6 whom they are made may be exempted, if it appears to the
7 court necessary, in order to carry into effect the intention
8 of the testator, and if there is other sufficient estate.

1 SECT. 30. When the estate given by any will is liable
2 for the payment of debts and expenses, as mentioned in the
3 preceding section, or is liable to be taken to make up the
4 share of a child born after the execution of the will, or of a
5 child or of the issue of a child not provided for in the will,
6 as hereinbefore provided, the executor has a right to retain
7 possession of the same until such liability is settled by or-
8 der of the probate court; and until the devises and legacies
9 so liable, are accordingly assigned by order of such court;
10 and when the same can properly be done, any devisee or
11 legatee may make his claim to such court to have such lia-
12 bility settled, and his devise or legacy assigned to him.

1 SECT. 31. All the devisees and legatees who, with the
2 consent of the executor, or otherwise, have possession of
3 the estate given to them by will, before such liability is set-
4 tled by the probate court, shall hold the same, subject to

5 the several liabilities mentioned in the preceding section,
6 and be held to contribute according to their respective lia-
7 bilities to the executor, or to any devisee or legatee from whom
8 the estate devised to him has been taken, for the payment of
9 debts or expenses, or to make up the share of a child born
10 after the making of the will, or of a child or the issue of a
11 child omitted in the will; and the persons who, as heirs
12 have received the estate not disposed of by the will, as pro-
13 vided in this chapter, are liable to contribute in like manner
14 as the devisees or legatees.

1 SECT. 32. If any of the persons liable to contribute,
2 according to the provisions of the preceding section, is in-
3 solvent, and unable to pay his share, the others shall be
4 severally liable for the loss occasioned by such insolvency,
5 in proportion to and to the extent of the estate they may
6 have received; and if any of the persons so liable to con-
7 tribute dies before having paid his share, the claim shall be
8 valid against his estate, in the same manner as if it was his
9 proper debt.

1 SECT. 33. The probate court may, by decree for that
2 purpose, settle the amount of the several liabilities, as pro-
3 vided in the preceding sections, and decree how much and
4 in what manner each person shall contribute, and may issue
5 execution as circumstances may require; and the claimant
6 may also have a remedy by action.

1 SECT. 34. Every will when proved, as provided in this
2 chapter, shall have a certificate of such proof indorsed there-
3 on or annexed thereto, signed by the judge of probate and
4 attested by his seal; and every will so certified, and the
5 record thereof or a transcript of such record certified by the
6 judge of probate and attested by his seal, may be read in
7 evidence in all courts within this state, without further
8 proof.

1 SECT. 35. An attested copy of every will devising lands
2 or any interest in lands, and of the probate thereof, shall be
3 recorded in the registry of deeds of the county in which the
4 lands lie.

1 SECT. 36. The word "executor" in this and subsequent
2 chapters, shall be construed to include an administrator
3 with the will annexed.